



MONTGOMERY COUNTY ETHICS COMMISSION

Kenita V. Barrow
Chair

Mark L. Greenblatt
Vice Chair

May 20, 2015

Waiver 15-05-008

John P. Markovs
Deputy County Attorney

Dear Mr. Markovs:

For the reasons stated below, the Ethics Commission grants your request for a waiver to allow you to represent the County in matters affecting Exelon Corporation (“Exelon”).

You and your wife own, as joint tenants with a right of survivorship, 44 shares of Exelon common stock. Exelon is a publicly traded company with 16,731,000 shares of issued and outstanding common stock, according to its 10-Q filed for March 31, 2015, filed with the Securities and Exchange Commission. The value of your shares of Exelon is approximately \$1500. Pursuant to § 19A-11(c)(3) of the County Code, you have an “economic interest” in Exelon.

Section 19A-11(a)(1) of the County Code prohibits employees from working on a matter that affects (in a manner distinct from its effects on the public generally) a business in which the employee or a relative of an employee has an economic interest. You have requested a waiver of this restriction pursuant to Montgomery County Code § 19A-8 so that you may participate in matters that may affect Exelon. In particular, a merger is pending pursuant to which Exelon seeks to acquire Pepco Holdings Inc. A waiver would allow you to represent the County on merger related matters. A waiver would also allow you to work on rate related matters and safety and reliability matters involving Exelon, Pepco, any merged company, or any other matter that could affect Exelon.

You indicate in your request for a waiver that prior to the proposed Exelon-Pepco merger, you had been involved as lead counsel for Montgomery County in opposing proposed increases in retail rates by

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Pepco. When the Exelon-Pepco merger was proposed, you ceased involvement with the Pepco rate case. To date, you have had no involvement with the merger matter.

Exelon's website states the following:

Headquartered in Chicago, Exelon does business in 48 states, the District of Columbia and Canada. Exelon is one of the largest competitive U.S. power generators, with more than 32,000 megawatts of owned capacity comprising one of the nation's cleanest and lowest-cost power generation fleets. The company's Constellation business unit provides energy products and services to more than 2.5 million residential, public sector and business customers, including more than two-thirds of the Fortune 100. Exelon's utilities deliver electricity and natural gas to more than 7.8 million customers in central Maryland (BGE), northern Illinois (ComEd) and southeastern Pennsylvania (PECO).

On its website, Pepco states that it serves 309,000 customers in Montgomery County.

Assuming the merger between Exelon and Pepco is consummated, the Ethics Commission recognizes that only a relatively small portion of Exelon's overall business would be conducted in Montgomery County.

Section 19A-8 provides that the Commission may grant to a public employee a waiver if it finds that:

- (1) the best interest of the County would be served by granting the waiver;
- (2) the importance to the County of a public employee . . . performing official duties outweighs the actual or potential harm of any conflict of interest; and
- (3) granting the waiver will not give a public employee or class of employees an unfair economic advantage over other public employees or members of the public.

The Ethics Commission finds that the best interest of the County would be served by granting the waiver. You have previously represented the County as lead attorney in the Pepco rate case (prior to any issue arising under § 19A-11) and have experience in the area of seeking reduced rates for citizens of the County. The County clearly has an interest in your continuing to be involved in matters involving the provision of energy to Montgomery County citizens.

Also, the actual or potential harm of the conflict of interest is minimal as the value of shares owned by you and your spouse is small (just over the statutory minimum of \$1000 in § 19A-11(c) for being considered an "economic interest") and miniscule in relation to the overall outstanding common stock of the Company. Given the scope of Exelon's overall business enterprise and the limited nature of your holdings, any effect of your services on your holdings of Exelon stock would be expected to be insignificant if measurable at all. The Commission can see no unfair economic advantage that you would obtain over other public employees or members of the public as a result of its granting this waiver.

The Commission notes that the County Attorney, your agency head, concurs in your waiver request..

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This waiver presumes that you and your spouse will not increase the size of your Exelon holdings (except through participation in a dividend reinvestment plan.) The Ethics Commission has relied on the representations made in your request in granting this waiver.

For the Commission,



Kenita V. Barrow, Chair

cc: Marc Hansen, County Attorney